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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of House Bill 5644 (As Introduced)

Topic: MIOSHA Penalties
Sponsor: Representative Robinson
Co-Sponsors: Representatives Shaffer, Vander Veen, Drolet, Marleau, Sheen, Ball, Pastor, Garfield, Baxter, and Farhat
Committee: House Commerce

Date Introduced: February 7, 2006

Date Enrolled:

Date of Analysis: February 8, 2006

Position: The Department of Labor & Economic Growth opposes the bill.

Problem/Background: Michigan is one of 26 states that operates a worker safety program approved by the United States Department of Labor. Michigan's program is required by federal law to be "as effective as" the federal program. This means that Michigan is expected to quickly promulgate changes in federal standards, inspect workplaces, levy fines, and otherwise maintain a program that is comparable in scope and application to the federal program.

When a violation of a MIOSHA standard is discovered as a result of an inspection or investigation, a citation is issued that includes a civil penalty as well as a time in which to abate the hazard. Existing statutory language provides that the agency establish a reasonable abatement period for the correction of the hazard. Any civil penalty that is collected based upon a citation is deposited in the state general fund. There is also a civil penalty for violating MIOSHA posting requirements of up to \$7,000.

Description of Bill: The proposal establishes a minimum time limit for abatement, which may not be less than 14 consecutive days. Employers are also authorized to apply any proposed civil penalty, other than that for a willful violation, to correcting the violation. Civil penalties for violations of MIOSHA posting requirements would be limited to violations that are not corrected within one day after receiving notice of the violation. Finally, a prior violation corrected within 14 days would not be able to be considered in establishing civil penalties for a subsequent violation.

Summary of Arguments

Pro: Proponents believe that the bill will encourage MIOSHA to partner with large and small businesses to work more effectively as a team in promoting workplace safety.

Con: Providing 14 days for abatement of a hazard is not reasonable and is inconsistent with the objective in the Michigan Occupational Safety and Health Act of assuring a safe workplace. Allowing an employer to apply the civil penalty to the cost of abating a hazard seriously undercuts the incentive to maintain a safe workplace. Although many employers value worker safety and will work hard to maintain a safe working environment, there are others employers not inclined to place a high priority on worker safety. The bill provides these employers with a risk-free strategy to delay spending on worker safety. The employer would have the option under this bill of waiting to be inspected before correcting hazards and using the funds that would otherwise have been spent in penalties to abate the hazards. This approach is unfair to the many Michigan employers who spend the resources and make the efforts required to maintain a safe workplace whether they are inspected by MIOSHA or not.

If this bill was enacted, it is expected that federal OSHA would determine the state's program to be not "as effective as federal OSHA" as required by federal law. They would likely initiate action to remove Michigan's authority to administer its own program and the substitution of federal inspection for state inspection and federal penalties for state penalties. Elimination of Michigan's authority is not an outcome desired by either business or labor.

MIOSHA penalties are intended to motivate compliance and are not intended to be solely punitive measures. In 1992 maximum MIOSHA penalties were increased by the Michigan Legislature to \$7,000 for most violations and to \$70,000 for "serious" or "willful" violations. At the same time, the Legislature enacted statutory provisions to adjust penalties as follows:

- A reduction of up to 60 percent based on the size of the business.
- A reduction of 10 percent based on past compliance history, and
- A reduction of up to 30 percent for a written and implemented safety and health program.

In addition, MIOSHA makes widespread use of the Informal Settlement Agreement (ISA) process. This process is intended to encourage prompt settlement of cases, expedite the abatement of hazards, and provide a forum to resolve disagreements. There is a significant penalty adjustment available through the ISA process which can reduce the penalty by up to 50 percent depending on the case.

Fiscal/Economic Impact

(a) Department

Budgetary: The bill will have no direct budgetary impact on the department.

Revenue: The bill will reduce revenue in fines and penalties collected by MIOSHA and passed through to the general fund.

Comments:

(b) State

Budgetary: By reducing general fund revenue (See below) the bill could impact funding for other programs.

Revenue: This proposal would have reduced general fund revenues by over \$4 million in FY 2005.

Comments:

(c) Local Government

Comments: Public sector employers are covered by Michigan's program but are not covered under the federal program. If federal OSHA removed Michigan's authority to administer its own program, there would be no inspections or enforcement of work safety requirements in state and local government workplaces.

Other State Departments: No other state departments are directly affected.

Any Other Pertinent Information: Similar bills have been introduced in past sessions. In February 1997 the Department of Consumer & Industry Services received a letter from the United States Department of Labor detailing many concerns about this type of proposal. There letter concludes with the following ominous statement:

"It is our opinion that enactment of the proposed legislative amendments would effectively reduce the potential first-instance sanctions for all violations. This, along with the other identified problems, would clearly make the Michigan occupational safety and health program less effective than Federal OSHA and could jeopardize the continued approval of the Michigan plan."

Administrative Rules Impact: Existing MIOSHA administrative rules would have to be modified.